

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA No. 1331/94

11

New Delhi, this the 14th day of September, 1999

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)  
HON'BLE SH. S.P. BISWAS, MEMBER (A)

In the matter of:

Sh. Dayanand  
S/o Late Sh. Tikaram Sharma,  
Aged 56 years,  
Working as Peon in the National Gallery  
of Modern Art,  
R/o 419, Aliganj,  
New Delhi-110003. .... Applicant  
(By Advocate: Sh. S.C.Luthra)

Vs.

Union of India through

1. The Secretary,  
Ministry of Human Resources Development,  
Dept. of Culture,  
Shastri Bhavan  
New Delhi-110001.
2. Director,  
National Gallery of Modern Art,  
Jaipur House,  
New Delhi-110003. .... Respondents  
(By Advocate: Sh. S.M.Arif)

O R D E R (ORAL)

By Hon'ble Sh. S.P.Biswas, M(A)

Heard counsel for both the parties.

2. The issue that falls for determination is whether the applicant's claim for antidating his promotion as LDC w.e.f. 23.4.90 is valid in the eyes of law?

3. The determination and appreciation of the above legal issue would require mentioning certain important dates in chronological order. These are as under:

(i) Applicant was appointed in a Group 'D'  
post on 2.12.1960 and got quasi  
permanent status on 1.7.64.

2

(ii) Passed the necessary qualifying test for promotion as LDC in the 10% departmental quota in 1982.

(12)

(iii) He was appointed as LDC on ad hoc basis as LDC on 1.8.84.

(iv) Reverted from the post of LDC from 24.7.87 when the post was given to an employee as S1. No.1 in the Annexure R-3 seniority list, revised on 14.8.1992.

(v) The post of LDC, under 10% quota was available only in 1987.

(vi) Dewani Ram came back to the department on 1.12.89 and got promoted on 2.12.89 to the post of Technical Restorer, Rashtrapati Bhawan.

(vii) The post of LDC under 10% quota became available with the respondents w.e.f. 3.12.89.

(viii) Dewani Ram who was a substantive holder of the post of LDC was appointed as Technical Restorer on regular basis on 23.4.90 and so the post of LDC became finally available on 23.4.90.

4. It is not in dispute that the applicant's seniority position has been restored back to S1. No.2 position in the grade of Group 'D' employees by Annexure R-3, apparently issued after August 1992. With antedating of the confirmation date of applicant as a Group 'D' employee, as in R-3, from 27.3.85 to 13.11.72, the applicant becomes No.2 in the organisation and with the exit of Sh. Dewani Ram he is admittedly the No.1 in the category of Group 'D' employees in the organisation of NGMA. In other words, from amongst the Group 'D' employees the applicant would be the legal claimant for the post of LDC against the departmental quota since he was not only eligible but also due for the post after 14.8.92.

5. The question, therefore, which arises is whether the respondents' action in denying the applicant a posting as LDC after 14.8.92 can be sustained in the eyes of law? The submissions of Sh. S.M.Arif, learned counsel for respondents are as follows:-

"The applicant was working as LDC on temporary basis but not against any of the 10% quota post. Therefore, he had to be reverted from the post of LDC on 24.7.87 when the said post had to be offered to Sh. Dewani Ram."

6. Sh. Dewani Ram was working as Senior Technical restorer on deputation to Rashtrapati Bhawan. Therefore, the respondents would submit that applicant does not have the legitimate claim for regularisation from 1984 onwards. It is also submitted that the post of LDC vacated by Sh.

VA

Dewani Ram does not come within the 10% quota meant for group 'D' employees. In other words, as per respondents there is no post available for LDC against the departmental quota even after 14.8.92.

7. The respondents have also taken the plea of limitation. If nothing else at least the applicant does not have any legitimacy of agitating the issue at this stage. The applicant should have approached immediately after 6 months or after one year from 14.8.92.

8. We have heard learned counsel for both parties and perused the records. The undisputed facts are that the applicant's seniority has been revised by the respondents by an order dated 14.8.92 as at Annexure A-1. The order mentions that the department of Culture "conveyed its approval for antidating confirmation of Sh. Daya Nand from 27.3.85 to 13.11.72." This order was issued in supersession of the respondents earlier order dated 26.4.85. In fact, this has been followed up by re-fixation of seniority as is evident at Annexure R-3 wherein the applicant amongst the Group 'D' employees of NGMA have been placed at S1. No.2 instead of S1. No.6 in the earlier seniority list dated 1.9.86 <sup>as</sup> <sup>at</sup> R-1. It is also not in dispute that the post of LDC fell <sup>empty</sup> vacant on regular basis from 23.4.90 when Dewani Ram was absorbed as a Technical Restorer. It is also not in dispute that the applicant had qualified in the requisite test for the post of LDC well before in 1982 and that he was also the next man available for the post. Under these circumstances, the respondents themselves should have considered the applicant's representation and given him the benefit of

posting as LDC from at least 14.8.92, i.e., the date when the respondents had restorted applicant's seniority position. We are not in a position to appreciate the respondents plea of limitation. This is because the applicant had already filed a representaion dated 19.4.93 following the respondents' communication as at Annexure A-1. Respondents did not respond to the aforesaid communication of the applicant. In view of the position as aforesaid, the OA deserves to be considered on merits and it is accordingly allowed with the following orders:-

(i) The respondents shall consider the applicant's promotion as LDC against 10% quota from 14.8.92.

(ii) Since the applicant has already [REDACTED] retired, the respondents shall allow the pensionary benefits of regular service of the applicant as LDC from August 1992 and refixe the pensionary benefits accordingly.

9. The exercise in respect of our aforesaid order shall be completed within a period of 3 months from the date of issuance of this order. No order as to costs.

  
( S.P. BISWAS )  
Member (A)

'sd'

  
(MRS. LAKSHMI SWAMINATHAN)  
Member (J)